

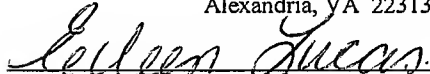
IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Application No.: 10/604,841  
Filing Date: August 21, 2003  
Inventor (first named): Thai et al.  
Group Art Unit: 1761  
Examiner Name: KELLY JO MAHAFKEY  
Attorney Docket No.: 45496.18

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I hereby certify that this document is being electronically transmitted by EFS on this date March 27, 2006 to the U.S. Patent and Trademark Office, Attention: Examiner Kelly Jo Mahafkey, at Group Art Unit 1761 in Alexandria, VA 22313-1450

  
EILEEN LUCAS

DATED: March 27, 2006

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**AMENDMENT & RESPONSE TO OFFICE ACTION MAILED 10/07/2005**

To: Assistant Commissioner for Patents  
Alexandria, VA 22313-1450

Sir:

This is in response to the Office Action mailed October 7, 2005. Enclosed is a Petition for a Three Month Extension which will extend the time for reply from January 7, 2006 to April 7, 2006. Please consider the remarks below.

## REMARKS

### Claim Rejections

1. Claim 1 is rejected under 35 USC 103(a) as being unpatentable over Smith (US 5275830), and as evidence by Brennan and in view of LaBaw et al.

As noted by the Examiner, the Smith reference does not teach or describe hardness of the food product as a parameter to be controlled.

The LaBaw et al. reference is directed to a binder for a ranch-mix type products which include nuts, fruits and processed cereal, where the proportion of nuts and cereal is at least as significant as the fruit portion. The binder provides a chewy and/or crisp textures.

The LaBaw reference specifically teaches away from the spongy, soft texture of the claimed invention. In column 1, lines 38-43, it is stated:

"On the opposite range of the textu[r]al scale are gelatin-based marshmallow-type matrices such as those disclosed in U.S. Patent No. 4,145,448 which may be used to bind cereal products and vitamins. Such products are spongy and sticky in texture, and **do not possess optimal binding properties for ranch-mix type products.**"  
[emphasis added]

The present invention, defined by its density and hardness, is spongy – that is the desired texture. Therefore, the LaBaw reference explicitly distinguishes such texture and therefore teaches away from the present invention. The spongy texture was previously known for cereal and vitamin products, but not for fruit-based snacks. The LaBaw product, being a ranch-mix product, is qualitatively different.

Furthermore, the hardness described in the LaBaw reference is of the binder composition itself, it does not describe the hardness of the completed product. Once the binder is added to the nut, cereal and fruit mixture, the hardness of the resulting product will be significant harder.

Therefore, claim 1 is submitted to be novel and inventive over the cited prior art. Claims 2-10 are dependent on claim 1.

## CONCLUSION

In view of the foregoing remarks and amendments, it is respectfully submitted that this application is in condition for allowance and allowance thereof is respectfully requested.

Respectfully submitted,

Huy Lam Thai et al.

By: 

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Edward Yoo (Reg. No. 41,435)

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